IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.1.2007

CORAM:-

THE HONOURABLE MR. JUSTICE J.A.K. SAMPATHKUMAR

A.S. No. 648 of 1992

Sundari alias Sundarambal .. Appellant(Plaintiff)

Vs.

1.Jayapathi Ammal
2.Viswanatha Reddiar
3.Namachivaya Reddiar
4.Lakshmi Narayanan
5.Santha
6.Gnanavathi
7.Rajarathina Kounder
8.Ayyamperumal Kounder
9.Ramu Reddiar
10.Thanthai Periyar Transport
Corporation Manager, Villupuram. .. Respondents(Defendants)

Appeal filed against the judgment and decree of the learned Subordinate Judge, Villupuram, dated 19.8.1985 made in O.S. No.3 of 1983.

For Appellant : Mr. T.R. Rajaraman

For Respondents : Mr. G. Manirathinam - R10.
No Appearance - R1 to R9.

JUDGMENT

This appeal is against the judgment and decree dated 19.8.1985 in O.S.No. 3 of 1983 on the file of the Subordinate Court, Villupuram in and by which, the learned Subordinate Judge, after analysing the evidence of both found that the Plaintiff is not entitled to suit claim and dismissed the suit while decreeing the suit for a sum of Rs.13052.50 only. The present appeal is filed by the plaintiff against the part dismissal.

2. The brief facts of the case are as follows:-

The plaint 'A' , 'B' and 'C' schedule properties belonged to one Vengatasamy Reddiar, father-in-law of the plaintiff. Vengatasamy Reddiar, his sons viz., defendants 2 to 4 and the plaintiff's husband constitute a joint Hindu family and there was no partition in the family. Vengatasamy

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Reddiar died in 1981. At the time of his death, the plaintiff's husband was entitled to 8/35 share in the suit properties.

3. The plaintiff has got a son by name Sundararajan. He suddenly died in the year 1980. He is also entitled to 4/35 shares in the share of the plaintiff's husband. After the death of the child, the plaintiff became the heir of the child. Plaintiff's husband died on 23.12.1981. On his death, the plaintiff is entitled to 2/35 shares and the first defendant is entitled to 2/35 shares. So the plaintiff in total is entitled to 6/35 shares in the suit properties. The plaint 'A' schedule properties were sold to defendants 7 and 8 for a sum of Rs.1,02,000/-. The entire amount was kept by plaintiff's father-in-law. After his death, defendants 2 to 4 are having the amount by depositing the same in the bank. The plaintiff is entitled to 6/35 shares in the amount and the plaintiff demanded the amount by notice. The defendants gave a reply stating that the amount was already divided among the sharers. Further in the sale deed, the amount was mentioned as Rs.54,500/-. After the filing of the suit, the Defendants 1 to 3 purchased 'B' schedule items 16 to 23 out of the sale amount of 'A' schedule properties. The first defendant purchased on 12.3.1983 'B' schedule 16th item for a sum of Rs.9,000/-. The second defendant purchased 'B' schedule items 7 to 15 and third defendant entered into a sale agreement regarding 'B' schedule items 16 to 23 for a sum of Rs.22,500/- and a sum of Rs.2,500/- has been deposited in O.S.No. 7 of 1984. The 4th defendant purchased in the name of his wife viz., the 11th defendant 'B' schedule items 24 to 28. The plaint 'B' schedule 5th item did not belong to 4th defendant independently. The plaint 'E' schedule jewels were given to the plaintiff at the time of her marriage. In 1981, the 9th defendant received the jewels stating that they are required for pledging for the family expenses of Vengadasamy Reddiar. Those jewels were not so far returned. The plaintiff's husband was working as a conductor in the 10th defendant corporation. He is having some amount mentioned in 'D' schedule with the 10th defendant. This plaintiff as a heir of her husband is entitled to the 'D' schedule amount. The joint family amounts have been deposited in Pondicherry Indian Bank and other Banks and they are shown as 'C' schedule. Hence the suit.

4. Written Statement of the second defendant adopted by defendants 1,3,5 and 6 reads as follows:-

Seventh defendant purchased certain properties for Rs.40,000/- and the 8th defendant purchased certain properties for Rs.7,500/-. The plaintiff's husband was a party to both the sale deeds. The sale proceeds were divided among the vendors then and there. No part of the sale consideration is payable to the plaintiff's husband. Even during the life time of Vengadasamy Reddiar, the sons were in separate enjoyment of the properties. They were also divided in status. There was an oral partition of the properties. Item 5 of 'B' schedule is not the joint family property. It is the separate property of the 4th defendant. Item 4 of 'B' schedule has been endowed upon Shri Pidari Amman Temple. Vengatasamy Reddiar and his sons have never received the jewels either

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from the plaintiff or from the 9th defendant. Defendants 1 to 3, 5 and 6 are not bound to answer the plaintiff's claim with regard to the jewels. So far as the items 2 to 7 of 'C' schedule are concerned, these defendants have no knowledge about the same. If there are any such deposit, these defendants have no objection to the plaintiff taking her share. So far as the Provident Fund, Gratuity and Family Benefit Fund are concerned, the first defendant was nominated to receive the amounts. So far as the Insurance and Pondicherry Savings Bank deposits are concerned, the relevant documents are with the plaintiff. These defendants have no objection for passing a decree for partition of the 'B' schedule properties except items 4 and 5 and 'D' schedule items without profits and costs also.

5. Written statement filed by the 4th defendant reads as follows:-

Item No. 5 of 'B' schedule is not a joint family property. It is the self acquired property of this defendant. This defendant is employed in South Arcot Central Co-operative Bank and drawing a salary of Rs.1,000/- per month. This defendant raised loan from the Bank and also withdrew the amount from the Provident Fund and purchased item 5 of 'B' schedule for Rs.21,000.- on 12.9.1976.

6. The Written statement filed by the defendants 7 and 8 reads as follows:-

These defendants have purchased 'A' schedule properties. 7th defendant purchased 'A' schedule items 1 to 3 for a sum of Rs.40,000/- and 8th defendant purchased items 4 and 5 for a sum of Rs.7500/-. Therefore, the suit is liable to be dismissed.

7. Written statement of the 9th defendant reads as follows:-

This defendant never borrowed such jewels from the plaintiff. Neither the 9th defendant nor the defendants 1 to 6 are in possession of alleged jewels and hence, they are not answerable to the claim of the plaintiff and the suit is liable to be dismissed.

8. 10th Defendant states as follows:-

As per the accounts, a sum of Rs.13,052.50 alone is due and liable to pay to the plaintiff. This defendant is ready to disburse the said amount to whosoever the Court directs.

9. 11th defendant states as follows:-

Plaint 'A' schedule properties were sold to defendants 7 and 8 for a sum of Rs.45,500/-. This defendant has purchased 'B' schedule items 24 to 28 on 12.3.1984 for a sum of Rs.37,000/-. Her father gave Rs.19,500/- for the purchase and this defendant bought loan from the Land Improvement Bank a sum of Rs.7,500/-. Further, this defendant has sold her jewels for a sum of Rs.10,000/-. Hence, items 24 to 28 of 'B' schedule are self acquired properties of this defendant. Therefore, the suit is liable to be dismissed.

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10. Plaintiff / Sundari was examined as P.W.1, one Mr. Lakshminarayanan was examined as P.W.2 and Viswanath was examined as P.W.3. Exs. A1 to A9 were marked on the side of the plaintiff. Defendants 1,2,3,4,7,8,11 and 9 were examined as D.Ws. 1,2,4,5,6,7,8, and 9 respectively. One Mr. Narayanasamy was examined as D.W.3. Exs. B1 to B24 were marked on the side of the defendants to confront the claim of the plaintiff. The lower Court after analysing the evidence in depth, decreed the suit in respect of 'D' schedule while rejecting other relief as there was no property available for partition as stated by the plaintiff.

11. Heard Mr. T.R.Rajaraman, learned counsel for the appellant and Mr.G. Manirathnam, learned counsel for the tenth respondent.

12. Upon hearing the rival claims, the only point for consideration is whether the properties referred in the plaint is available for partition as prayed for by the plaintiff?

13. No doubt, it is true that one Vengatasamy Reddiar, is the absolute owner of the 'A' schedule properties. There is no dispute regarding the same. It is also true that 'A' schedule properties were sold to defendants 7 and 8 under Exs. B1 and B2. There is no dispute with regard to this factor also. It is the case of the plaintiff that her husband being a signatory to Exs.B1 and B2, not received his due share in the sale consideration. It is the case of the respondents that the husband of the plaintiff being a signatory to the sale deeds viz., Exs. B1 and B2, received his due consideration out the sale proceeds and as such, the Plaintiff cannot maintain the suit. There is ample evidence to show that 'B' schedule properties are the self-acquired properties of the second defendant. The plaintiff has not filed any record to show that 'B' schedule properties are not self-acquired properties of the second defendant. The lower court has rightly dismissed the claim of the plaintiff with regard to the 'B' schedule properties. Similarly, the plaintiff has not filed any document as a proof for 'C' schedule properties as a joint family properties. In such view of the fact, the lower court, has rightly rejected the claim of the plaintiff with regard to 'C' schedule properties also. Similarly, the plaintiff miserably failed to prove that the properties referred to in 'E' and 'F' schedule are belonged to joint family properties. In such view of the fact, the lower Court has rightly rejected the claim of the plaintiff in this regard. Though the plaintiff contended that her husband being a signatory to Exs.B1 to B2, not received his due share, she has not proved the same. The learned counsel for the appellant, at the time of argument fairly concedes that there is no proof that the husband of the plaintiff has not received his share from the sale proceeds of Exs. B1 and B2. In such view of the matter, the lower court was right in dismissing the claim of the plaintiff with regard to the 'A' schedule properties also . From the narration of the events, I am satisfied that the finding of the lower court in this regard is in order and does not require any interference.

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14. In the result, this appeal is dismissed. The parties have to bear their own costs.

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Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

To
1.The Subordinate Judge,
Villupuram.
2. The Record Keeper, V.R. Section, High Court, Chennai.
+ One cc to Mr. G. Munirathnam Advocate SR 1526
JSK (co)
sg 13/2/07

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